

46. AGREEMENT

“[T]he collective bargaining agreement between Butte Silver-Bow and the Federation is a contract. It is a contract that guarantees certain rights to employees subject to its provisions. These were not ‘at will’ employees....” **ULP #54-89.**

46.12: Type of Agreement – Supplemental Agreement

An employer must take part in the “contractual mechanism” for the ongoing process of collective bargaining. This may include negotiations of supplemental agreements. **ULP #1-75**

46.15: Type of Agreement – Successor Agreement [See also 11.16, 41.8. and 41.9.]

“Regardless of the legality of an oral agreement modifying a collective bargaining agreement in 1967, such an agreement became illegal when the Public Employees Bargaining Act was passed in 1973.... [In addition,] the contracts under which Stuart McCarvel worked (1975-77 and 1977-79) preclude any continuation of an oral agreement regardless of its legality.” **ULP #24-77**

46.21: Provisions Inconsistent with Statute – Conflict with Existing Legislation

“Section 18.6, a nondiscrimination clause, ... may violate Section **51-519, RCM 1947**, which specifically prohibits school trustees from appointing relatives to any position of trust or involvement.” **ULP #5-77**

46.22: Provisions Inconsistent with Statute – Conflict with Subsequent Legislation

“All firemen who commenced employment as Great Falls Firemen or served in such a capacity during the effective period of the ordinance have a vested contractual right [to the benefits of the ordinance concerning longevity pay].” Therefore, a subsequent resolution repealing the ordinance was unconstitutional as applied to firefighters covered by the contract in effect between the city and labor organization representing the firefighters at the time of the repeal. **IAFF Local 8 v. Great Falls (1977)**

“The distinguishing factors in this case, as compared o those in **IAFF Local 8 v Great Falls (1977)** are: (1) The Highway Patrol officers received their increments each year, and these increments were incorporated into the 1975 state pay plan, (2) no other contract, by union or otherwise, with the Highway Patrol officers is violated, and (3) the object of the original one percent statute was not a contractual inducement to become effective after 20 years of service. Therefore, the repeal of the statute in this case providing for yearly increments

to Highway Patrol Officers did not trample any legal or equitable principles.... [There was] no impairment of a vested contractual right.” Wage Appeal of **Highway Patrol Officers v. Board of Personnel Appeals (1984)**

46.31: Validity – Suit to Compel Enforcement

“The issue before this court is enforcement of a collective bargaining contract, not any decision of the Intervenor, Board of Personnel Appeals. Neither principles of res judicata nor of collateral estoppel are applicable.” **DC #5-75 District Court (1979)**

See also **Butte Teachers’ Union v. Butte School District (1982).**

46.42: Terms – Duration

See **ULP #7-78.**

46.44: Terms – Expiration

See **ULP #18-78.**

In *Forsyth* [**ULP #37-81**], the Board...., citing a Ninth Circuit case, ***American Distributing Co. v. NLRB*, 715 F.2d 446, 114 LRRM 2402 (CA 9, 1983)** likened the collective bargaining agreement to a living document whose obligations carry on beyond expiration.” **ULP #29-86.**

46.61: Agreement Administration – Interpretation

A grievance procedure is one appropriate avenue for gaining interpretation of a contract and/or bargaining a supplemental agreement if needed. Failure to process such a grievance is an unfair labor practice. **ULP #1-75**

“[T]he basic question here is one of contract language versus contract administration..... [The Hearing Examiner] does not think that the School District committed an unfair labor practice in negotiating the language of provision 4.04 ... or that the provision as it is written ... is violative of an employee’s right to decide whether or not to pay monies to a labor organization as a condition of employment.” **ULP #44-79**

“[T]he School District’s improper administration of provision 4.04 did not result in any advantage to the Association that proper administration of the provision could not have.... The Association was entitled to receive the representation service fees called for, either from the employees employed at the time or their replacements should they have been terminated for their failure/refusal to pay the fees as a condition of employment.” Therefore, the Hearing Examiner found the charge to be without merit. **ULP #44-79**

“The union and the county entered into an enforceable contract the terms of which were known by the surveyor, the union, and the commissioners. One part of that contract called for a grievance procedure with a decision to be rendered by the surveyor. The surveyor complied with the terms of the contract by holding a hearing and rendering a decision. Had he not done so there would have been an unfair labor practice. As it were, the decision issued by the surveyor was adverse to the county.... The county cannot now abrogate the contract because the surveyor, an elected official, did not follow the dictates of the commissioners.” **ULP #20-86.**

“At the crux of this matter is a contractual dispute between the Complainants and the Defendant regarding the application and interpretation of the Collective Bargaining Agreement.” **ULP #14-87.**

Language [related to the processing of grievances] in the contract “is broad in its intent. It is to afford the grievance procedure to an employee who has a dispute with the application of disciplinary actions. It is also intended to cover differences in the interpretation of the terms of the agreement.” **ULP #27-87.**

“As a general rule, the parties are encouraged and expected to exhaust their negotiated dispute resolution process prior to seeking relief elsewhere: ‘The Board is not the proper forum for parties seeking to remedy an alleged breach of contract,’ ***National Dairy Products Corporation and United Dairy Workers Local 83***, 45 LRRM 1332, 126 NLRB No. 62 February 4, 1960.” **ULP #4-89.**

See also **ULP #19-88.**

“The Collective Bargaining Agreement’s grievance/arbitration procedure is the proper forum for determining the merits of the Complainant’s grievance and/or whether the request to move it on to Step III was timely. See ***Local 4-447 v. Chevron Chemical Company***, 125 LRRM 2232, 815 F.2d 338, 1987 CA 5.” **ULP #4-89.**

“[T]he Board should not interpret or construe a Collective Bargaining Agreement except where necessary to decide an Unfair Labor Practice Charge. See ***NLRB v. C & C Plywood Corporation***, 64 LRRM 2065, 385 U.S. 421, January 9, 1967.” **ULP #4-89.**

“The contract terms regarding insurance premiums are clear and unmistakable.... Where the contract terms are clear and unambiguous, the contract terms control.... The clear and unambiguous language in this contract cannot be changed by this Hearing Officer given inaction or action of the parties which do not conform to the express Contract terms. The Contract terms are clear and unmistakable that change of the Contract requires signed written agreement of the parties.” **ULP #1- 91.**

“[W]here the contract language is unambiguous the National Labor Relations Board has held the special competence of an arbitrator is not needed to interpret the contract, *Oak Cliff-Golman Baking Co.*, 202 NLRB 614, 82 LRRM 1688 (1973).” ULP #1-91.

46.64: Agreement Administration — Continuing Duty to Bargain during Contract Term

“The grievance procedure is a part of the continuing collective bargaining process, *Steelworkers vs. Warrior Navigation*, 46 LRRM 2416, 363 US 574 (1960). An employer has the same obligation to bargain collectively over grievance s as over the terms of the agreement, *City of Livingston vs. Montana Council No. 9*, 100 LRRM 2528, 571 P.2d 374 (1977).” ULP #14-87.

See also ULP #4-89.

46.641: Agreement Administration – Continuing Duty to Bargain During Contract Term – Concerning Contractual Terms

An employer must take part in the “contractual mechanism” for the ongoing process of collective bargaining. This may include negotiations of supplemental agreements. ULP #1-75

“The grievance procedure was to determine whether or not a prior contractual obligation on the part of the university, that is, an obligation which existed prior to the election of the bargaining agent, had been violated. On that very narrow fact situation, I cannot find that the university failed to meet established prior to University Teachers Union’s election, and therefore prior to any duty to bargain.” ULP #7-78